IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2161 OF 2001

1. Small Scale Wire Drawing Units & Association of persons drawing of wire from the wire rods having its registered office at 31, Broach Street, Devshi Ratanshi Marg, Carnac Bunder, Mumbai 400 009

2. Mr.Mukund D. Shah of Bombay Indian Inhabitant being the President of the Petitioner No.1's Association having his office at B-26, Ghatkopar Industrial Estate, off LBS Marg, Amrut Nagar, Ghatkopar (W), Mumbai - 86.

3. Mr.Chandresh T. Mehta also of Mumbai Indian Inhabitant, being the Secretary of the 1st Petitioner abovenamed having his office at.. .. Petitioners.

V/s.

1. The Union of India through the Joint Secretary Ministry of Law, Finance and Company Affairs, Aayakar Bhawan, M.K. Road, Churchgate Mumbai - 400 020

2. The Central Board of Excise and Customs, a statutory body constituted under the provisions of the Central Board of Revenues Act, 1963 having its office at North Block, New Delhi.

3. The Chief Commissioner of Central Excise, New Central Excise Building, M.K. Road, Churchgate, Mumbai 400 020

4. The Chief Commissioner of Central Excise, Pune having his office at ICE House,

41-A, Sasoon Road,
Pune 411 001.

5. The Commissioner of Central Excise, Mumbai - I, having his office at New Central Excise Building, M.K. Road, Churchgate, Mumbai 400 020

6. The Commissioner of Central Mumbai - II, having his office at Piramal Chambers, 9th Floor, Jijibhoy Lane, Lalbaug Parel, Mumbai

7. The Commissioner of Central Excise, Mumbai - III having his office at Nav Bharat Chambers, Ranade Road, Dadar West, Mumbai - 400 028

8. The Commissioner of Central Excise, Mumbai - IV, having his office at New Central Excise Bldg., M.K. Road, Churchgate, Mumbai 400 020

9. The Commissioner of Central Excise, Mumbai - V, having his Office at Utpad Shulka Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai 400 059.

10. The Commissioner of Central Excise VI, having his office at Vardaan Trade Centre, Road No.16, Wagle Estate, Thane.

11. The Commissioner of Central Excise VII having his office at New CGO Complex, CBD, Belapur, Navi Mumbai.

12. The Commissioner of Central Excise, Nagpur having his office at Kendriya Utpad Shulka Bhavan, Civil Lines, Nagpur .. Respondents.

Mr.M.R. Baya i/b. Mr.M.G. Gawde for the petitioners.

CORAM : R.M. LODHA &

J.P. DEVADHAR, JJ.

DATED : 5TH MAY, 2006.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

By this writ petition, the petitioners seek to challenge the legality and correctness of the circular No.570/7/2001-Cx. dated 16th February, 2001. By the said circular, the Director to the Government of India to the question as to whether the process of drawing of wire from wire rod would amount to 'manufacture' under section 2(f) of the Central Excise Act, 1944 answered that the drawing of wire from wire rods would amount to manufacture.

2. It is not necessary to go into the facts and diverse contentions raised in the writ petition in the light of the decision of the Supreme Court of India in the case of Collector of Central Excise V/s. Technoweld Industries, 2003 (155) E.L.T. 209 (S.C.). The question before the Supreme Court was whether by drawing wire into a thinner gauge, 'manufacture' can be said to have taken place and whether the wire of the thinner gauge is excisable to duty. The Supreme Court considered the matter thus :

> "3. This question came to be considered by the Customs, Excise and Gold (Control) Appellate Tribunal. In the case of M/s.Vishwaman Industries v. Commissioner of Central Excise, Delhi. By an order dated 2nd November, 2000, it was held that the process

of drawing wire from wire rods did not amount to manufacture. The Tribunal based its decision on an earlier decision of the Tribunal in the case of Jyoti Engg. Corpn v. Collector of Central Excise reported in 1989 (42) E.L.T. 100 (Tribunal). In Jyoti's case (supra) the concerned tariff entry was 26AA(i-a) which included Bars, Rods, Coils, Wires etc. The Tribunal has held that the raw material was a wire rod and the final product was also a wire. It has held that no new product has come into existence and that there was no manufacture. Civil appeals filed against both the afore-mentioned decisions were dismissed.

4. Thereafter, the Tribunal has been following these decisions in all cases. One of such case, was the case concerning M/s. Hind Enterprises. The civil appeal against that order was also dismissed by this Court on 9th August, 2002.

5. Reliance was placed upon the authority of this Court in the case of S. Shanmugavel Nagar v. State of T.N. and Another reported in 2002 (8) SCC 361. It was submitted that all the civil appeals had been dismissed by non-speaking orders. It was submitted that it is open to this Court to consider whether or not the impugned decisions of the Tribunal are correct. There can be no dispute, with this proposition. We have, therefore, heard the learned Counsel at length.

6. It is submitted that in Jyoti's case (supra), the decision was based upon the fact that there was only one tariff item, namely, 26AA(i-a). It is submitted that now tariff items 72.13 and 72.15 deal with Bars and Rods whereas tariff item 72.17 deals with Wires. Reliance is also placed upon Chapter Note 1(o) which defines "Wire" as Cold-formed products in coils, of any uniform solid cross-section along their whole length, which do not conform to the definition on flat-rolled products.

7. This Court was also taken through the processes, which are undergone by the manufacturer and which have been set out in some of the orders passed by the Commissioner. It was submitted that the raw

> material is a rod falling under tariff item 72.13 and/or 72.15 whereas after the process a distinct and separate marketable product falling under tariff item 72.17 has come into existence. It was submitted that the market price of both the products is also different inasmuch as the cost of the raw material was approximately Rs.13,000/- per metric ton whereas for the final product the market price was approximately Rs.15,000/- per metric ton. It was submitted that under these circumstances, the Court must now hold that the earlier decisions of the Tribunal are not correct and that the final product i.e. the Wire which is drawn by the cold drawing process is an excisable product.
>
> 8. We are unable to agree with the submission. It is to be seen that the initial product was a wire rod. The ultimately product is also a wire. All that is done is that the gauge of the rod is made thinner and the product is finished a little better. In our view the earlier decisions of the Tribunal are correct. There is no manufacture of a new product. Merely because there are two separate entries does not mean that the product becomes excisable. The product becomes excisable only if there is manufacture."

3. It would be, thus, seen that in Technoweld Industries, the Supreme Court has held in unmistakeable terms that the drawing of wire from wire rod does not amount to ‘manufacture’ of a new product.

4. As a matter of fact based on the aforesaid decision of the Supreme Court, the Government of India issued a circular on 29th May, 2003 withdrawing the instructions contained in circular No.570/7/2001 dated 16th February, 2001 which is impugned in the

present writ petition. Circular No.720/36/2003-CS dated 29th May, 2003 reads thus :

> "Circular No.720/36/2003-CX., dated 29-5-2003
> F.No.139/3/2001-CX.4
>
> Government of India
> Ministry of Finance (Department of Revenue)
> Central Board of Excise & Customs, New Delhi
>
> Subject : Central Excise - Whether drawing of wire from wire rod amounts to manufacture under Section 2(f) of Central Excise Act, 1944.
>
> I am directed to invite your kind attention to Circular No.570/7/2001-CX., dated 16-2-2001 [2001 (128) E.L.T. T43] wherein it was clarified that the drawing of wire from wire rods would amount to manufacture.
>
> 2. In this connection, the Hon'ble Supreme Court has dismissed the review petitions filed by Excise Department in the case of (i) M/s.Vishwaman Industries (ii) Hind Enterprises and (iii) M/s.Technoweld Industries holding that such process does not amount to manufacture.
>
> 3. In view of the above judgments, it has been decided to withdraw the instructions contained in Circular NO.570/7/2001-CX., dated 16-2-2001.
>
> 4. Field formations and trade may be informed accordingly.
>
> 5. Receipt of the Circular may please be acknowledged.
>
> 6. Hindi version will follow."

5. In view of the decision of the Supreme Court, it is clear that the instructions issued by Circular dated 16th February, 2001 to the effect that drawing of wire from wire rod amounts to 'manufacture' is

legally not correct. As a matter of fact, the mistake that was committed by issuance of circular dated 16th February, 2001 has been rectified by withdrawing the said circular vide circular dated 29th May, 2003 referred to hereinabove.

6. In the light of the reasons indicated above, no further order needs to be passed with regard to circular dated 16th February, 2001.

7. The writ petition stands disposed of accordingly. Rule stands discharged. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)